IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE K. MOHAN RAM

CRL.O.P.No.30612 of 2006
and M.P.No.1 of 2006

Dr.Jayakumar @ Javid Kamal ... Petitioner/Accused

-Vs.-

1. State, Rep. by
The Sub Inspector of Police
Guduvancheri Police Station
Kancheepuram District
(Crime No.132 of 2005)

2. M.Vijayalakshmi
(R-2 impleaded as per the order of this Court made in M.P.No.3 of 2006, dated 15.12.2006) ... Respondents/Complainant

Prayer.: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to call for the records in C.C.No.123 of 2006 on the file of the Judicial Magistrate No.II, Chengalpattu, pending trial, and quash the same.

For Petitioner : Mr. N.Pappiah
For Respondent : Mr. A.Saravanan
Government Advocate (Crl.Side), for R-1.
Mr. Doraisamy, for R-2.

O R D E R

The learned counsel for the petitioner submits that the petitioner has come forward with this petition to call for the records in C.C.No.123 of 2006 on the file of the Judicial Magistrate No.II, Chengalpattu, pending trial, and quash the same.

2. The petitioner, who is facing trial in C.C.No.123 of 2006 on the file of the Judicial Magistrate No.II, Chengalpattu, for an offence under Section 494 IPC, has filed the above criminal original petition seeking to quash all further proceedings in C.C.No.123 of 2006. Though the petitioner has taken several grounds and has pointed out certain irregularities in the registration of the complaint, in the investigation of the case and taking cognizances, etc., this Court is not going into all those aspects, as the above criminal original petition can be disposed of on the ground that even taking the allegations contained in the complaint filed by the second respondent

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and the averments contained in the statement of witnesses to be true, in the considered view of this Court, no case is made out for registering a case under Section 494 IPC.

3. Learned counsel for the petitioner submitted that under the charge of Bigamy, if the evidence showed that the essential ceremonies have not been performed, it cannot justify the conviction even though admitted by the accused. He further submitted that the prosecution must prove that the second marriage was duly performed in accordance with religious rites applicable to the form of marriage and an admission by the accused in this respect cannot be made the basis of conviction.

4. Learned counsel for the second respondent submitted that the written complaint was given by the second respondent alleging that the petitioner had married her as per Hindu Customary Rites on 27.06.1982 and two children were born out of their wedlock; thereafter leaving her alone he left for Dubai; after 15 years he came back and pleaded pardon from her and requested her to come to Chennai; she went to his house at Urapakkam; there she came to know that without divorcing her he had contracted a second marriage with one Mumtaz secretly and he was living with her as her husband; when questioned, the petitioner is said to have told that she should not talk about his second wife; that is the gist of the complaint given by the second respondent and on the basis of the complaint the first respondent had obtained a legal opinion from the Additional Public Prosecutor and got permission from the learned Judicial Magistrate and registered a case under Section 494 IPC and after completing the investigation has filed a charge sheet. But however the learned counsel is unable to point out the necessary allegations either in the complaint lodged by the second respondent or in the statement of witnesses recorded in the course of investigation which constitute the ingredients attracting the commission of an offence under Section 494 IPC. However the learned counsel submitted that the allegations contained in the complaint disclose the commission of an offence of cheating.

5. Learned Government Advocate (Crl. Side) submitted that the case had to be registered as per the directions issued by this Court in Crl.O.P.No.26747 of 2004 and the final report was also filed pursuant to the directions issued by this Court in Crl.O.P.No.18756 of 2005. He further submitted that the case was not registered merely on receipt of the complaint from the second respondent, but the case was registered only after getting permission from the learned Judicial Magistrate.

6. I have carefully considered the above said submissions made by the learned counsel on either side. At the outset, it has to be pointed out that a perusal of the complaint lodged by the second respondent does not contain any averments constituting the ingredients for the commission of an offence under Section 494 IPC. As rightly contended by the learned counsel for the petitioner that under the charge of Bigamy, if the evidence showed that the essential ceremonies have not been performed cannot justify the conviction even though admitted by the accused and that the prosecution must prove that the second marriage was duly performed in accordance with religious rites applicable to the form of marriage and an admission by the accused in

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this respect cannot be made the basis of conviction. A perusal of the statement of witnesses recorded under Section 161 of the Criminal Procedure Code during the course of investigation also shows that the necessary averments constituting an offence under Section 494 IPC are conspicuously absent. The witnesses have simply stated that the petitioner had admitted to the complainant that he had married Mumtaz. Such a statement alone cannot be the basis for framing a charge under Section 494 IPC. As laid down in the decision reported in 1966 M.L.J. Crl. 151 (SC) (KANWAL RAM V. HIMACHAL PRADESH ADMINISTRATION) under the charge of Bigamy, if the evidence showed that the essential ceremonies have not been performed it cannot justify the conviction even though admitted by the accused. Here there is no such direct admission on the part of the petitioner, but the second respondent in her statement had stated that as if the petitioner had admitted the second marriage. Except that, there is absolutely no material to show that the second marriage was performed between the petitioner and the said Mumtaz and curiously the first respondent has not filed any charge sheet against the said Mumtaz. The whole procedure that has been followed in this case is totally irregular and against the provisions contained in Section 198 of the Criminal Procedure Code.

7. In such view of the matter, the above criminal original petition has to be allowed and accordingly allowed and all further proceedings in C.C.No.123 of 2006 on the file of the Judicial Magistrate No.II, Chengalpattu, is hereby quashed. Consequently the connected MP is closed.

srk

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1. The Sub Inspector of Police
   Guduvancheri Police Station
   Kancheepuram District
   (Crime No.132 of 2005)

2. The Judicial Magistrate No.II, Chengalpattu,

3. The Public Prosecutor, Madras High Court, Madras

+1 cc to M/s.S.Doraisamy, Advocate Sr.No.74267.

+1 cc to M/s.N.Pappiah, Advocate Sr.No.73894.

AD(CO)
DCP/7.1

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